

SECRETARIAT NPT WORKING GROUP2nd revised working draft

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An Analysis of some Provisions of the
Non-Proliferation Treaty (NPT)

This analysis consists of two parts. The first part analyses and discusses those provisions of NPT which relate to IAEA safeguards. The second part contains a table with suggested interpretations of Article III of NPT.

PART I

Obligations of NNWS

1. The obligations of NNWS under NPT can be grouped in three categories:

- a) unconditional prohibitions (not to ...)
- b) conditional prohibitions (not to ..., unless ...)
- c) undertakings to perform (to ...).

2. Secondly, a distinction can be made between basic (substantive) treaty obligations (e.g. Article II, Article III.2) and obligations which derive from the acceptance of these basic obligations (e.g. Article III.1, III.4).

Unconditional Prohibitions

3. These are contained in Article II and consist basically of two distinct obligations, namely:

- a) not to receive nuclear weapons (or other nuclear explosive devices) from outside, and
- b) not to manufacture nuclear weapons (or other nuclear explosive devices).

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Each of these unconditional prohibitions is subdivided. Not only the physical receipt of the nuclear weapon itself but also the receipt of control over such a weapon is prohibited. Furthermore, to seek or receive any assistance (presumably assistance by a third State or group of States is contemplated) in the manufacture of nuclear weapons is prohibited, as well as the manufacture itself and any other form of acquisition of nuclear weapons. It was stated that according to the letter of explanations given by the co-authors and the general spirit of the Treaty itself the undertakings in Article I and II referred solely to nuclear explosive devices that were not distinguishable from nuclear weapons (Italy A/PV. 1672). It was also argued that the term "other nuclear explosive devices" indicated that only those types of explosives were prohibited which had nuclear weapons characteristics. Both problems are important if an authoritative definition of "nuclear weapon or other nuclear explosive device" is worked out; it appears, however, that for purposes of IAEA control this possible future development can be disregarded for the time being and the definitions provisionally adopted as a working hypothesis do not reflect that distinction.

4. The above unconditional prohibitions constitute the most important part of the obligations which NNWS would undertake and these obligations determine, together with the relevant part of Article III.1 of NPT, the scope and purpose of the control system. However, of these prohibitions presumably only the undertaking not to manufacture nuclear weapons is to be verified by the control system "with a view to preventing diversion of nuclear energy from peaceful uses for weapons manufacture". It is therefore necessary to have some understanding as to the meaning of the terms "diversion", "nuclear weapons and other nuclear explosive devices" and "manufacture". The meaning of the term "diversion" is discussed in paragraph 13. The assumption that safeguards would verify only one of the prohibitions of Article II by ^{ensuring} ~~assuming~~ that no diversion of nuclear material takes place, is based on the concept of the Agency's Safeguards System and on the text of Article III.1 of NPT; however, Article III.1 does not specify which of the NPT obligations should exactly be verified by the application of safeguards but indicates the scope of IAEA safeguards under NPT. Since the scope of IAEA safeguards under Article III.1 of NPT

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is to prevent diversion, NNWS have presumably undertaken not to divert nuclear material for nuclear weapons or other nuclear explosive devices and IAEA control will verify that obligation.

Conditional Prohibitions

5. Under Article III.2 all Parties to the Treaty undertake to provide neither nuclear material (source and special fissionable material), nor special equipment nor non-nuclear material to any NNWS for peaceful purposes, unless the source or special fissionable material is subject to the safeguards required by Article III. Several points come up immediately if one examines that provision:

- a) This does presumably not prohibit suppliers, especially NWS, from providing materials for military purposes other than nuclear weapons manufacture. Whereas transfers from NWS of materials for military propulsion purposes to a NNWS may cause few problems from the control viewpoint, provided that such supplies are kept completely apart from safeguarded material, the situation is different if such transfers are to take place from a NNWS Party to NPT to an other NNWS.

Two situations may be envisaged:

- (i) The NNWS transfers safeguarded nuclear material, i.e. material which is used in peaceful activities, to another NNWS for military propulsion purposes. Under the present Safeguards Document such a transfer is not possible because IAEA safeguards will have to continue to apply to transferred material unless it were agreed between the Agency and the State concerned that safeguards would be terminated under para 26(f) of the Safeguards Document.
- (ii) The NNWS transfers unsafeguarded material or unrefined ore concentrate, which is not considered source material. This would be a similar situation as transfers of material for military propulsion purposes from a NWS.

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- b) What are the safeguards required by Article III? Clearly there will be a distinction between NNWS which are Contracting Parties to the NPT and those which are not. Contracting Parties will have to accept safeguards on all their peaceful nuclear activities. Accordingly, the supply of such items does not involve a new safeguards agreement. For non-contracting States the situation is different. Supplies of such items may take place through the Agency, a regional organization, or bilaterally. The NPT conditions will not be fulfilled merely by bilateral safeguards or regional safeguards. Accordingly, all bilateral safeguards arrangements in which the supplying State is a Party to NPT will have to be turned over to the Agency to meet NPT requirements or be replaced or supplemented by appropriate unilateral submission agreements; regional systems will have to be verified by the IAEA.
- c) Would nuclear material supplied or connected with supplies for military purposes to a NNWS be exempt from safeguards or not. This problem is connected with the meaning of the term "peaceful nuclear activities". Depending on the interpretation of that term such material would either be totally exempt from IAEA safeguards, or exempt from the moment it is put in the propulsion device, or IAEA control measures (although probably of a different nature) could apply.
- d) Must safeguards apply to all nuclear material in "all nuclear activities" in the receiving NNWS not Party to NPT or is it sufficient if the nuclear material supplied or produced, processed or used by or with items falling under the transfer restrictions of Article III.2 is subject to safeguards. The term "safeguards required by this Article"

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could thus mean safeguards on all peaceful nuclear activities (cf. USSR statement) or safeguards only on a certain part of such activities as defined in an agreement with the IAEA. If the first interpretation is the correct one there would be practically no difference from the control viewpoint between NNWS Parties and NNWS not Parties to NPT. If safeguards are only applicable to items transferred etc. it is assumed that not only the transferred nuclear material or the first generation of produced material is subject to safeguards but also subsequent generations of produced material as well as any other nuclear material which is processed or used by the use of such material, as is the situation under the Safeguards Document.

- e) What types of special equipment and material, other than source material or special fissionable material, are covered by the transfer restrictions of Article III.2. In this connection the US statement in the First Committee of 31 May 1968^{1/} is particularly relevant. According to this interpretation, although Agency safeguards are not applied to uranium mines or ore-processing plants, exports of uranium ore to NNWS would be subject to the provision of Article III.2 "under the conditions specified therein so that the source or special fissionable material derived from this ore in the recipient State would be subject to safeguards."

Undertakings to Perform

6. The undertaking in the fifth preambular paragraph is probably a separate obligation and not only a general statement which is further amplified in the body of the Treaty. NPT presumably means that such a co-operation would be between contracting parties themselves as well as with the Agency. What measures are foreseen, both within the Safeguards System and complementary to the present Safeguards System is not clear from NPT nor from the discussions.

^{1/} Document A/C.1/PV.1577.

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7. In addition to the preamble, the Treaty contains two obligations to perform, both related to safeguards. Under Article III.1 NNWS shall accept safeguards which shall apply to all nuclear material in all their peaceful nuclear activities within their territory, under their jurisdiction, or under their control anywhere (cf. para 17). The type of safeguards to be applied is also indicated in broad terms.

8. Under Article III.4 NNWS have to conclude safeguards agreements with the IAEA either individually or together with other States in accordance with the Statute. Para. 2 of the US aide memoire of 24 January 1968 states that the safeguards agreements can also be concluded between the IAEA and "another international organization the work of which is related to the IAEA and the membership of which includes the parties concerned".

Acceptance of Safeguards

9. The term "to accept safeguards" is seen to mean to have safeguards applied. Under the Statute and in accordance with paragraph 15 of the Safeguards Document safeguards are applied if a request to that effect is made to the Agency and if a safeguards agreement is then concluded with the Agency. The term "safeguards" is probably used in NPT in a very broad sense. There may be some practical differences in the application of safeguards according to the extent a national or regional system of controls is developed, which the Agency can use to satisfy itself that NPT obligations are met. Despite those possible practical differences the Treaty does not make a conceptual distinction between the direct application of safeguards and verification of another system.

Form of Safeguards Agreements

10. NPT does not prescribe the specific form for such an agreement but it identifies the Parties thereto, namely the Agency and the State or States which have ratified NPT. It is clear therefore, that there must

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be some sort of treaty relations between the Agency and each Party to NPT. The agreement could, for instance, be a bilateral agreement, a multilateral agreement approved by the Board and open for accession, or an agreement with a regional organization. An agreement which involves both a regional organization and those members which are Parties to NPT (mixed agreement) can also be envisaged. A detailed examination of that question will be made under task A.4.

11. Under Article III.1 of NPT the agreement is to be negotiated and concluded in accordance with the Statute and the Safeguards System. In the strict sense the terms "negotiation" and "conclusion" are parts of the treaty-making procedure but do not involve the substance of agreements. However, it is very unlikely that the NPT drafters intended to cover procedural aspects only, especially since the Statute and the Safeguards System do not give us guidance as to the treaty-making process of safeguards agreements. What the NPT authors meant to say, according to the discussions in the ENDC, is that the safeguards agreements to be concluded under NPT will provide for the application of the relevant portions of the Agency's Safeguards System, including the Statute. According to the US aide memoire of 24 January the reference to the Agency's Safeguards System in the first paragraph of Article III should not be construed as rigidly incorporating the present IAEA Safeguards System documents in the Treaty. Future changes in the IAEA System would not require an amendment to the Treaty.

Substance of Safeguards Agreement

12. The Treaty gives also guidance on some points relating to the substance of safeguards agreements (apart from the general reference to the Statute and the Safeguards System). These are the following:

- a) The purpose and scope of safeguards;
- b) The items subject to safeguards;
- c) The application of safeguards procedures;
- d) Directives for the implementation of safeguards.

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The Purpose and Scope of Safeguards

13. Under NPT, safeguards have to be accepted for ^{the} exclusive purpose of verification of the fulfilment of Treaty obligations with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons. The first and basic question is therefore which of the Treaty obligations are to be verified by safeguards. As stated above, this would probably involve verification of one absolute prohibition (not to manufacture nuclear weapons or other explosive devices) and one conditional prohibition. The term "diversion of nuclear energy" is taken to mean diversion of nuclear material, i.e. the use of nuclear materials in various nuclear processes for the manufacture of weapons or other nuclear explosive devices. The purpose of safeguards under NPT is to provide timely detection of the diversion of nuclear materials to the manufacture of nuclear weapons or other explosive devices, or of the removal from safeguards for unknown purposes of safeguarded nuclear material, and thereby to deter, or by the risk of early detection to prevent, such manufacture. As safeguards agreements have the exclusive purpose to provide for verification of two of the five Treaty prohibitions, some provisions of the Safeguards Document will not be applicable, or only with some modifications e.g. the basic undertaking in NPT is not to manufacture nuclear weapons; under the Statute and the Safeguards Document it is not to use items subject to safeguards in such a way as to further any military purpose.

Items Subject to Safeguards

14. NPT requires that safeguards shall be applied on all source or special fissionable material in all peaceful activities within the territory of the State concerned, under its jurisdiction, or carried out under its control anywhere. Since NPT does not contain a definition of source material or special fissionable material, presumably the definitions of the Statute are to be applied. One important issue concerns the definition of source material under Article XX.3 of the Statute. This issue also came up in connection with the Mexican Safeguards Agreement and the question is at what stage of concentration and refinement does ore become source

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material. Secondly, what is meant by "peaceful nuclear activities". NPT permits two interpretations:

- a) There is a distinction between four kinds of nuclear activities
- prohibited (nuclear weapons and other nuclear explosive devices)
 - permitted (peaceful activities)
 - permitted (military non-explosive activities which may conceivably be subject to (IAEA) safeguards or some other methods of international verification)
 - permitted (military non-explosive activities which are not subject to international safeguards).
- b) Alternatively, military non-explosive activities may be subsumed under peaceful activities which would then involve safeguards, presumably of a different kind, also on such activities.

15. It is likely that the first interpretation is the correct one. On the other hand, a system of safeguards that applies to "peaceful nuclear activities" only and which completely ignores "military non-explosive activities" might not be effective and could presumably not provide the assurances required under NPT. Therefore special procedures may have to be worked out for nuclear material to be used in NNWS for well defined military non-explosive activities. As already stated above, bilateral supplies of nuclear material for military purposes which are kept completely separated, which is likely, and which do not appear in the safeguards records and reports will probably cause no problem from the control viewpoint. The situation will be very complicated if such material is to be processed or used together with safeguarded material. If the Treaty permits withdrawal of safeguarded material by NNWS for military purposes it is clearly very important to identify the point where

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X "peaceful" material becomes "military" material by agreement between the State and the Agency. This should not be left to the State's discretion. Until that point nuclear material could be considered to be used for peaceful purposes and subject to safeguards. (This problem should be further looked at by DSI.)

The Application of Safeguards Procedures

16. Procedures for the safeguards shall be followed in respect of nuclear material wherever located. Although NPT does not define "principal nuclear facilities" the definition of the Safeguards Document will presumably apply.

X 17. As regards the territorial scope of safeguards, these are not limited to peaceful activities within the State's territory (NPT has no definition, for an example of a definition of "territory" see Article 4 of the Latin American Treaty). Safeguards are also to apply to all peaceful activities outside a State's territory which are conducted under a State's jurisdiction, or control anywhere. The implications of the word "control" are not clear e.g. it might involve also management control or financial control; clarification should therefore be obtained as to what type of control is envisaged, in addition to activities carried out under a State's jurisdiction. If peaceful nuclear activities under a State's control are carried out in the territory of a third State, it is obvious that safeguards can only be applied with the consent of the third State. It follows that NNWS Parties to NPT wishing to carry out activities in a third State (whether NWS or NNWS) will have to make sure that the third State accepts safeguards on that activity. Another more immediate question concerns the application of safeguards on nuclear material in the course of transport and the Agency must be aware of its responsibilities, as such material would in many cases be under the jurisdiction of a NNWS once it leaves the port of export.

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18. The principle contained in the preamble that the flow of materials shall be safeguarded within the framework of the IAEA Safeguards System by the use of instruments and other techniques as they are developed is strengthened through reference to that principle in Article III.3. That injunction will therefore constitute an important element in the implementation of the Agency's safeguards responsibilities (although only at a future date) and should therefore be fully discussed under task A.2.

Directives for the Implementation of Safeguards

19. Article III.3 lists certain directives to the Agency in fulfilling its task to apply safeguards under NPT. Those specifically mentioned provide that -

- a) The implementation of safeguards must comply with Article IV, i.e. the development of research, production and use of nuclear energy for peaceful purposes without discrimination may not be hampered;
- b) Economic or technological development of the Parties may not be hampered;
- c) International co-operation in the peaceful field may not be hampered, including the international exchange of nuclear material and special equipment, provided that the exchange is in accordance with Article III.2.

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1 A negative effect of safeguards on research etc. for military activities (non-explosive) would therefore be compatible with NPT.

20. Additional undertakings for NNWS are contained in Article V (nuclear explosions) and Article VI, although that Article would seem to apply especially to NWS. These points are not further examined here; an extensive examination of all points connected with the implementation of safeguards under NPT especially its technical aspects, should be considered in connection with task A.2.

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Special Problems

21. A special problem will arise from the fact that there will be three depository Governments as one of these Governments is likely to consider Eastern Germany (or the German Democratic Republic) as a NNWS, and therefore entitled to participate in the Treaty and under an obligation to conclude a safeguards agreement with the Agency. In their statements of 12 June before the GA the US and the UK spoke on that problem. They stated that Article IX does not bring about recognition by other States or otherwise alter the status of an unrecognized régime or entity which may purport to accede to NPT, nor does it make such a régime or entity eligible to be admitted to intergovernmental organizations (probably the IAEA is meant) whose Charter limits admission exclusively to States. Those Governments specifically reserved the right to object if later an unrecognized entity should seek to assert privileges, such as participating in a conference called under Articles VIII or X of the Treaty. However, they did not refer to a situation when such an entity requested the IAEA to conclude a safeguards agreement. The Ukraine and Byelorussia would probably be considered NNWS but have, so far, not signed NPT. Under the NPT definition only those States are NWS which have manufactured and exploded a nuclear weapon prior to 1 January 1967. Should a NNWS, not Party to NPT, explode such a device it will still be a NNWS for the purposes of NPT, but such a fiction would not only be difficult to maintain, it would also bar accession by that State to NPT.

Obligations of NWS

22. As a corollary to the unconditional prohibitions for NNWS, NWS will undertake, according to Article I -

- a) not to transfer nuclear weapons or control over such NW to any recipient whatsoever, (i.e. including another NWS or any State not Party to NPT) directly or indirectly;
- b) not to assist, etc. NNWS in the manufacture or acquisition of nuclear weapons or control over such weapons.

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It appears that this provision precludes the actual transfer of nuclear weapons between NWS but it does not prohibit the provision of nuclear material, certain devices or other assistance for the manufacture of such a weapon by one NWS to another.

23. In respect of transfers to NNWS for peaceful purposes (whether Parties to NPT or not) the same restrictions apply regardless whether the supplier is a NWS or a NNWS. However, nuclear material used in peaceful activities within NNWS Parties to the Treaty will already be subject to IAEA safeguards; accordingly international transfers will become automatically known to the IAEA through the records and reports systems which form part of IAEA safeguards. This will not be the case with regard to NWS, unless they submit voluntarily all peaceful activities to IAEA safeguards. Accordingly some separate notification arrangements (cf. those mentioned in the Mexican Agreement) should be established under which NWS (and probably also NNWS not Parties to NPT) would inform the IAEA in advance of intended transfers. In such an event the Agency would -

- a) make the necessary safeguards arrangements with the recipient before the transfer is made;
- b) inform the export State Party to NPT that such arrangements already exist; or
- c) inform the export State that no satisfactory safeguards arrangements have been concluded and that accordingly, as regards transfers from NPT Parties, the transfer cannot be made.

The undertaking in the Preamble by all NPT Parties to facilitate the application of IAEA safeguards would constitute the basis for such a notification mechanism and registration of international transfers, at least as far as NPT Parties are concerned.

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Deposit or Return of Produced Material

24. The application of the present Safeguards Document will not prevent the accumulation of large stocks of special fissionable material in NNWS, even if such quantities are in excess of the State's needs. Even if a Safeguards Agreement foresees the continuation of Safeguards on produced material after the expiry of the Agreement it cannot be assumed that it will be possible, in all situations, to apply safeguards. Accordingly, consideration might have to be given at some future date on how to deal with the problem of large Pu stocks. For financial and other reasons such measures could probably only be taken by or with the active support of the major export States. Such measures could either be taken within the framework of IAEA (in this case it would be necessary to apply those provisions of Article XII.A.5 of the Statute which have been left dormant concerning the requirement to deposit with the Agency any excess fissionable material recovered or produced) or outside the IAEA under bilateral arrangements between the supplying and the receiving State or some multilateral arrangement. The problem does not concern only NWS but all supplying States, especially those with a developed nuclear industry. It is clear that the implementation of the statutory provision on deposit will have far reaching financial and political implications since future reactor developments will require large stocks of Pu (which may, however, not be considered stock piles of excess material). NPT is silent on that point.

Tasks foreseen for the Agency

25. Most of the tasks specifically foreseen for the Agency which relate to safeguards have already been described in the preceding paragraphs. Obviously NPT cannot put a direct obligation to the Agency to perform these tasks because the Agency will not be a Party to NPT. The obligations of the Agency will be included in the safeguards agreements to be negotiated and these tasks and functions will have to be approved by its competent organs. Safeguards agreements will have to be approved by the Board, although a question may arise whether an arrangement with EURATOM would also have to go to the General Conference for approval under Article XVI of the Statute.

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Possible Additional Tasks for the Agency

26. Along with the considerable expansion of the application of its Safeguards System, the Agency should be prepared to face some additional tasks which are not explicitly referred to in NPT but which may in future follow directly or indirectly from its provisions or from statements made in the course of the negotiations. These tasks might include:

- a) The application of safeguards in some NWS on all their peaceful activities.
- b) The application of safeguards to meet possible requirements of States transferring nuclear materials, in addition to the NPT requirements (e.g. an undertaking for peaceful use).
- c) NNWS may subject their exports to NWS to the condition that IAEA safeguards shall apply (see Italy's statement of 12 June in the GA).
- d) Complementary to the expressed support by States for safeguards research, the Agency will be expected to carry out intensive research and development activities.
- e) The Agency may be designated as the "appropriate international body with adequate representation of NNWS" to act as an intermediary for NNWS who wish to obtain the benefits of peaceful applications of nuclear explosions from NWS.
- f) The Agency's role in the exchange of scientific and technical information on the peaceful uses of atomic energy may be expected to increase at a more rapid pace than without NPT. The Agency may also play a role in facilitating the fullest possible international exchange of equipment and materials.
- g) The Agency may assume an additional role to supplement the effectiveness of its Safeguards System in the registration of international transfers of nuclear materials.
- h) Co-operation with the NNWS concerned to ensure that physical security measures and sound systems of nuclear materials management and accounting are applied in that State.
- i) Development of international standards for national safeguards or material management.

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PART II

WHAT ARTICLE III MEANS:TextCommentsArticle III.1

1. "Each NNWS Party to the Treaty undertakes to accept safeguards, ... with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices."

- a) The safeguards in question (that is the safeguards envisaged by the NPT) are intended to prevent diversion of nuclear material only from peaceful uses. If the NNWS has or starts any non-peaceful non-explosive uses, presumably other measures will have to apply to prevent their diversion to "nuclear weapons or other nuclear explosive devices". (These may be bilateral or IAEA measures, but would not result automatically from NPT).
- b) The term "other ... explosive" makes it clear that the nuclear weapons referred to are explosive weapons and not submarines, radiation devices or radiotoxic weapons. This interpretation is fortified by the definition in Article IX.3 of a nuclear weapon state as one which has manufactured and exploded a nuclear weapon or other nuclear explosive device.
- c) The term "with a view to preventing" presumably does not involve measures for the physical prevention of diversion of nuclear material but prevention of such a diversion by the deterring effect of a detection of any diversion.
- d) "diversion" means the use of nuclear material in various processes for the manufacture of nuclear weapons or other explosive devices, or the removal from safeguards of nuclear material for unknown purposes.

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2. These safeguards shall be "in accordance with the Statute of the IAEA and the Agency's safeguards system".

a) This does not mean that amendment of the IAEA Statute or safeguards system will require amendment of NPT. It does mean that the agreements to be concluded will incorporate the relevant portions of the IAEA safeguards system.

b) This does not mean that the statutory provisions for any amendments of the IAEA Statute or the Board's competence to revise the Safeguards Document or the Inspectors Document have been changed.

c) Neither the Statute nor NPT require that safeguarded material be used permanently for peaceful purposes (except material supplied under a Project Agreement). Should such an obligation be provided for in a Safeguards Agreement it would mean the acceptance of an additional obligation.

3. These safeguards shall be "as set forth in an agreement to be negotiated and concluded with the IAEA".

Each NNWS Party to NPT must therefore enter into Treaty relations with the IAEA, even if it is not a Member State of IAEA.

4. The "exclusive purpose" of these safeguards is "verification of the fulfilment" of the obligations that the NNWS has assumed under the Treaty.

a) Which of the various obligations are meant, is not defined. Since, however, the purpose of safeguards is to prevent "diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices", it is clear that the obligation meant is precisely that of not making a nuclear weapon by diverting nuclear material for that purpose from peaceful uses.

b) Presumably also the obligation assumed by NNWS under Article III.2 is meant, as far as transfers of nuclear material to other NNWS are concerned.

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5. The safeguards shall be "applied to all source or SFM in all peaceful nuclear activities within the territory of" the NNWS or "under its jurisdiction, or carried out under its control anywhere".
- a) Once again the word "peaceful" is used. Clearly, therefore, the safeguards required by Article III do not apply to non-peaceful non-explosive activities. This does not, of course, prevent some other system of verification or safeguards being applied to such activities.
- b) The term "under its jurisdiction" will also cover nuclear merchant ships under the flag of the NNWS and might also extend, in theory, to nuclear material carried by other vessels under that flag (if such carriage is considered a "peaceful nuclear activity").
- c) The meaning of the words "under its control anywhere" is not clear. Obviously they cannot apply to activities carried out by the NNWS in the territory of another State if that State objects to safeguards. ?
6. The procedures for applying the safeguards "shall be followed with respect to source or SFM whether it is being produced or processed or used in any PNF or is outside any such facility".
- a) The language used here is almost verbatim that of the first sentence paragraph 29 of INFCIRC/66/Rev.1. The omission of the second sentence of that paragraph should not be interpreted to mean that storage of nuclear material within principal nuclear facilities is not subject to safeguards. The object of the phrase is thus to ensure that the procedures used are those of the IAEA system. Furthermore the meaning of terms like "source or special fissionable materials" and "principal nuclear facility" are assumed to be the same as those used in the IAEA Statute and Safeguards Document.

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Article III.2

7. "Each State party to the Treaty undertakes not to provide (a) source or special fissionable material ... to any non-nuclear weapon State for peaceful purposes, unless the source or special fissionable material shall be subject to the safeguards required by this Article".
- a) The obligation is imposed equally on NWS and on NNWS Party to the Treaty.
 - b) They may not supply to any NNWS, whether Party to the Treaty or not except under the safeguards referred to.
 - c) Inferentially they may supply source material and special fissionable material to a NWS (whether Party to the Treaty or not) without the safeguards referred to.
 - d) The prohibition applies only to supplies made for peaceful purposes. Inferentially therefore supplies may be made to a NNWS (Party or not) for non-peaceful (military non-explosive) purposes without safeguards or under some system of safeguards other than those "required by this Article".
 - e) The term "peaceful purposes" is used here in contradistinction to "peaceful uses" and "peaceful nuclear activities" in Article III.1. However, the only difference seems to be that "purposes" implies an objective the attainment of which is not always directly within the control of the exporting State, while in Article III.1, we are referring to an actual facility or operation (including a storage operation) under the control of the State which gives the undertaking.

The Exporting NNWS Case, Party to NPT

- f) A NNWS is obliged to accept safeguards under Article III.1 in order that verification may be made of the fulfilment of its obligation not to divert nuclear material. These safeguards will be incorporated in the agreement between the IAEA and the NNWS. Safeguards cover already nuclear material in peaceful activities that is to be exported from the NNWS, but the material will shortly

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cease to be under its "jurisdiction" or "control". The transfer restriction assumed in this Article is thus additional to the obligation which the State assumes in Article III.1. In practical terms, IAEA safeguards will follow (as they would normally do now) any source or SFM subject to safeguards provided by the NNWS to any other NNWS for peaceful purposes but not to a NWS. The records and reports systems to be agreed upon as part of the applicable safeguards procedures will therefore have to contain the necessary details to ensure that the IAEA can fulfil its responsibilities in the receiving NNWS promptly upon receipt of the material by that State.

- g) NPT does not require that IAEA safeguards follow exports from a NNWS to a NWS unless the latter voluntarily places its peaceful activities under safeguards or this is a condition for the transfer, agreed upon between these States. Nor, it seems, will they follow any exports from a NNWS to another NNWS (whether Party to the Treaty or not) if the purpose of the export is for non-peaceful (non-explosive) purposes.

The Exporting NWS Case

- h) Under Article III.1 there are no safeguards on source or SFM in a NWS and they are not required to conclude any safeguards agreements with the Agency. Some mechanism will therefore have to be established to notify the IAEA of transfers from NWS and to give the Agency an opportunity to veto contemplated exports if the necessary safeguards arrangement with the receiving State has not or not yet been concluded by the Agency.

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The Receiving NNWS Case

- i) We interpret "the safeguards required by this Article" as meaning that IAEA safeguards will follow all exports for peaceful purposes from NPT Parties to all NNWS but will be confined to the exported nuclear material and, in accordance with the Safeguards Document, to nuclear material produced in or by the use of such transferred material. There is, however, an alternative interpretation. This is that no supply whatsoever is permitted to a NNWS unless the importing State is doing all the things that Article III.1 requires of a NNWS that is Party to the Treaty - i.e. accepting safeguards on all its peaceful nuclear activities. In practical terms this would be tantamount to saying that no supplies could take place to a NNWS unless it had all the safeguards arrangements required under NPT because it were Party to the NPT or had for some other reason invited IAEA to apply safeguards to all its peaceful nuclear activities.

8. "Each State party to the Treaty undertakes not to provide
(b) equipment or material especially designed or prepared for the processing, use or production of SPM, to any non-nuclear weapon State for peaceful purposes, unless the source or SPM shall be subject to the safeguards required by this Article".

In addition to the comments made above, the following are relevant to this obligation.

- a) It has been made clear in NPT discussions that Article III.1 is not designed to apply safeguards to ore or ore processing (refining) plants. On the other hand, it has been stated in clarification to a pertinent question that Article III.2 is also intended to prevent the supply of ore or unrefined ore concentrate to a NNWS for peaceful purposes, unless the source or special fissionable material derived from it is under IAEA safeguards. Since "source material" must have the same meaning in Articles III.1 and III.2 it

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cannot cover ore or unrefined ore concentrate in III.2. Hence ore or unrefined ore concentrate must be included in the term "material especially designed or prepared for the ... production of SFM".

- b) The other types of "material" aimed at are presumably heavy water reactor grade graphite and zirconium. The "equipment" aimed at presumably means principal nuclear facilities and some of their crucial components.

Article III.3

9. "The safeguards required by this Article shall be implemented in a manner designed to comply with Article IV of this Treaty"

The reference is to paragraph 1 of Article IV.

10. "The safeguards required by this Article shall be implemented in a manner designed ... to avoid hampering the economic or technological development of the parties"

Some of this language is taken over from INFCIRC/66/Rev.1 (paragraph 9 "... the Agency shall implement safeguards in a manner designed to avoid hampering the State's economic or technological development").

11. "The safeguards required by this Article shall be implemented in a manner designed ... to avoid hampering ... international co-operation in the field of peaceful nuclear activities, including the international exchange of nuclear material and equipment for the processing, use or production of nuclear material for peaceful purposes in accordance with the provisions of this Article"

The safeguards may not hamper international transactions, provided these transactions take place in conformity with the transfer conditions of Article III.2.

12. "The safeguards required by this Article shall be implemented in a manner designed to comply with ... the principle of safeguarding set forth in the Preamble."

This is an injunction on the IAEA to implement safeguards by safeguarding effectively the flow of source and special fissionable material by the use of instruments and other techniques at certain strategic points; if such techniques are available.

Article III.4

13. "Non-nuclear weapon states party to the Treaty shall conclude agreements with the IAEA to meet the requirements of this Article"
14. These agreements may be concluded by States "individually or together with other States".
15. These agreements shall be "in accordance with the Statute of the IAEA".
16. The "negotiation of such agreements shall commence within 180 days from the original entry into force of this Treaty".
17. These "agreements shall enter into force not later than 18 months after the date of initiation of negotiations".
18. "For States depositing their instruments of ratification after the 180 day period (i.e. later than 180 days after the NPT has entered into force) negotiation of such agreements shall commence not later than the date of such deposit". These agreements will also enter into force not later than 18 months after the date that negotiations start.
- It may also be desirable to conclude arrangements with NWS concerning notification of transfers they make to NNWS.
- It has been made quite clear in NPT discussions that this clause permits conclusion of agreements by the IAEA "with another international organization the work of which is related to the IAEA and the membership of which includes the parties concerned" (in other words, EURATOM) and that those agreements shall concern "the safeguards obligations of the parties" in question (see Adrian Fisher statement).
- Article III.1 adds "and the Agency's safeguards system".
- a) It is up to the States to request negotiation of such an agreement with IAEA.
- b) The Treaty enters into force after ratification by the USSR, the USA and the UK and 40 other States signatory to the Treaty and deposit of their instruments of ratification (Article IX.3).
- For States that have started negotiations before NPT comes into force, agreements with IAEA may enter into force even before the Treaty's entry into force.
- For States depositing their instruments of ratification not later than 180 days of the original entry into force of NPT, the safeguards agreement must enter into force not later than 18 months after NPT is in force (i.e. the period of two years has been shortened for this group of States).